



## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

### **14 CFR Part 1260**

### **RIN 2700-AD79**

### **Profit and Fee Under Federal Financial Assistance Awards**

**AGENCY:** National Aeronautics and Space Administration

**ACTION:** Proposed Rule

**SUMMARY:** NASA is proposing to revise the NASA Grant & Cooperative Agreement Handbook to prohibit the payment of profit or fee on Federal Financial Assistance awards, i. e. grants and cooperative agreements. This is an extension of the currently existing prohibition on payment of profit or fee to commercial entities under Federal Financial Assistance awards.

**DATES:** Interested parties should submit comments to NASA at the address identified below on or before (Insert 60 days from the Federal Register Publication Date) to be considered in formulation of the final rule.

**ADDRESSES:** Interested parties may submit comments, identified by RIN 2700-AD79, via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to R. Todd Lacks (Room 5J75), NASA Headquarters, Office of Procurement, Contract Management Division, Washington, DC.20546. Comments may also be submitted by email to: [todd.lacks@nasa.gov](mailto:todd.lacks@nasa.gov).

**FOR FURTHER INFORMATION CONTACT:** R. Todd Lacks, NASA Headquarters, Office of Procurement, Contract Management Division, Room 5J75; telephone: (202) 358-0799; email: [todd.lacks@nasa.gov](mailto:todd.lacks@nasa.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

Historically, NASA has discouraged the payment of profit or fee under its Federal Financial Assistance awards because payment in excess of costs is inconsistent with the intent of grant and cooperative agreements which provide funding in the form of financial assistance to recipients for their performance of a public purpose. In the case of awards to commercial firms, payment of profit or fee is specifically prohibited. Because the prohibition does not include other recipients such as educational and non-profit organizations, NASA's policy has been misinterpreted and inconsistent application has occurred. A recent review indicates that, in instances where the Agency has accepted such proposals and paid management fees, the payment of those fees has been inappropriate for the grant or cooperative agreement effort. While the payment of fees, historically, has occurred on less than 1 percent of Agency grants and cooperative agreements, this proposed rule which extends the prohibition on payment of profit or fees to all recipients of NASA grants and cooperative agreements, will ensure that the regulation accurately reflects Agency policy.

## **II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## **III Regulatory Flexibility Act**

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5

U.S.C. 601, *et seq.*, because the rule does not impose any additional requirements on small entities and currently less than 1 percent of recipients of NASA grants and cooperative agreements receive profit or management fees.

#### **IV. Paperwork Reduction Act**

The Paper Reduction Act (Pub. L. 104-13) is not applicable because the prohibition on payment of profit and management fees by NASA does not require the submission of any information by recipients that requires the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### **List of Subjects in 14 CFR 1260**

Colleges and universities, Business and Industry, Grant programs, Grants administration, Cooperative agreements, State and local governments, Non-profit organizations, Commercial firms, Recipients

William P. McNally  
Assistant Administrator for Procurement

Accordingly, 14 CFR Part 1260 is proposed to be amended as follows:

1. The authority citation for 14 CFR 1260 continues to read as follows:

**Authority:** 42 U.S.C. § 2473(c)(1), Pub. L. 97-258, 96 Stat. 1003 (31 U.S.C. § 6301, *et seq.*), and OMB Circular A-110

#### **PART 1260 – GRANTS AND COOPERATIVE AGREEMENTS**

2. In § 1260.4, paragraph (b)(2) is revised to read as follows:

##### **§ 1260.4 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) NASA does not pay profit or fee under grants or cooperative agreements.

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3. In § 1260.10, paragraph (b)(1)(iv) is added to read as follows:

**§ 1260.10 Proposals.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) NASA does not pay profit or fee under its grants or cooperative agreements.

\* \* \* \* \*

4. In § 1260.14, paragraph (e) is added to read as follows:

**§ 1260.14 Limitations.**

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(e) NASA does not pay profit or fee under its grants or cooperative agreements.